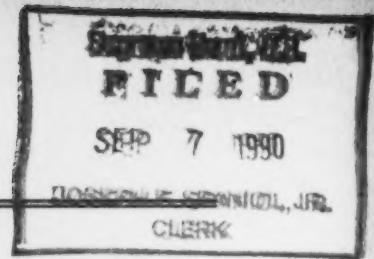


(2)

No. 90-292



In The
Supreme Court of the United States
October Term, 1989

LEO M. MULLEN, M.D., ET AL.,
Petitioners,
vs.

THE CITY OF BELTON, ET AL.,
Respondents.

On Petition For Writ Of Certiorari To The
Missouri Court Of Appeals

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether petitioners' failure to comply with the Missouri Rules of Civil Procedure constitutes an adequate state-law ground for affirming the judgment below.

PARTIES TO THE PROCEEDINGS

Petitioners, Dr. Leo Mullen and the Credit Card Corporation (a Missouri corporation wholly owned by Leo and Delores Mullen), were plaintiffs-appellants below. Respondents, the City of Belton, Missouri, the Belton City Council, Belton Mayor Gary Mallory, and Stefanie Johnson were defendants-appellees below. Pursuant to Rule 29.1 respondent notes that it has no knowledge of any subsidiaries or affiliates of the Credit Card Corporation.

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BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents City of Belton, Missouri, et al., respectfully pray that the Court deny the petition for writ of certiorari seeking review of the decision of the Missouri Court of Appeals.

STATEMENT OF THE CASE

Petitioners filed a petition for injunctive relief in Missouri state court seeking to prohibit the collection of taxes on numerous properties they owned in the City of Belton, Missouri. Petitioners alleged, among other things,

that the special assessments were invalid because the public election authorizing them violated state law.

Petitioners, then represented by counsel, agreed to allow the trial court to decide the case on stipulated facts. After carefully reviewing the stipulated facts and the written briefs submitted by counsel, the trial court held the election and the special assessments valid and denied the petition for injunctive relief.

Petitioners' *pro se* appeal to the Missouri Court of Appeals was dismissed after petitioners twice failed to comply with the Missouri Rules of Civil Procedure. Petitioners were given notice and the opportunity to cure the deficiencies in their brief, but failed to do so.

Petitioners filed the instant petition after the Missouri Supreme Court denied their application for transfer.

REASONS THE PETITION SHOULD BE DENIED

I. Petitioners' Failure To Comply With The Missouri Rules Of Civil Procedure Constitutes An Adequate State-Law Ground For Affirming The Judgment Below.

The petition should be denied for the fundamental reason that it does not present a question worthy of the Court's attention. State-law grounds exist for affirming the judgment below, and petitioners' vague allegations of fraud, conspiracy and bribery do not present a substantial federal question.

Even assuming the petition presents a substantial federal question, petitioners' failure to comply with the

Missouri rules is still an adequate state-law ground for affirming the judgment below and thus precludes the Court from reviewing that judgment. " '[W]hen, as here, there can be no pretense that the [state] Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any federal question, this Court accepts the decision whether right or wrong.' " *Wolfe v. North Carolina*, 364 U.S. 177, 195 (1960) (quoting *Nickel v. Cole*, 256 U.S. 222, 225 (1921)).

In *Wolfe*, the Court recognized that " 'it rests with each State to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise ' " *Id.* (quoting *John v. Paullin*, 231 U.S. 583, 585 (1913)).

Leo Mullen had sufficient notice that his *pro se* status would not relieve him of the obligation to comply with the Missouri Rules of Civil Procedure. In *Mullen v. Renner*, 685 S.W.2d 212, 215 (Mo. App. 1984), the Missouri Court of Appeals stated that

"Dr. Mullen is no stranger to the courts of this state or of the United States. He has frequently been involved in litigation. . . . '[R]ules of interpretation designed to serve the naivete and lack of legal sophistication of the customary *pro se* pleader do not necessarily apply to him whose favorite hobby at least, if not vocation, must be the writing of pleadings and filing of law-suits.' "

(Quoting *Mullen v. Starr*, 537 F. Supp. 945, 948-49 (E.D. Mo. 1982)). Thus, it should have been no surprise to petitioners that their repeated failure to comply with the

Missouri rules would result in the dismissal of the appeal.

Because the judgment below can be affirmed on state-law grounds, the instant petition presents no issues worthy of the Court's time and attention. *See, e.g., Hedgebeth v. North Carolina*, 334 U.S. 806, 807 (1948).

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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